

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW JERSEY

3 IN RE: VALSARTAN, LOSARTAN, AND CIVIL ACTION NUMBER:  
4 IRBESARTAN PRODUCTS LIABILITY 1:19-md-02875-RBK  
5 LITIGATION CASE MANAGEMENT CONFERENCE  
6

7 Mitchell H. Cohen Building & U.S. Courthouse  
8 4th and Cooper Streets  
9 Camden, New Jersey 08101  
Thursday, August 3, 2023  
Commencing at 1:16 p.m.

10 **B E F O R E:** THE HONORABLE ROBERT B. KUGLER,  
11 UNITED STATES DISTRICT JUDGE, and  
THOMAS I. VANASKIE (RET.), SPECIAL MASTER

12 **A P P E A R A N C E S:**

13 MAZIE SLATER KATZ & FREEMAN, LLC  
14 BY: ADAM M. SLATER, ESQUIRE  
103 Eisenhower Parkway  
Roseland, New Jersey 07068  
15 Counsel for Plaintiffs

16 KANNER & WHITELEY, LLC  
17 BY: CONLEE S. WHITELEY, ESQUIRE  
DAVID J. STANOCH, ESQUIRE  
701 Camp Street  
18 New Orleans, Louisiana 70130  
19 Counsel for Plaintiffs

20 John J. Kurz, Official Court Reporter  
21 John\_Kurz@njdc.uscourts.gov  
(856) 576-7094

22 Proceedings recorded by mechanical stenography; transcript  
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**A P P E A R A N C E S: (Continued)**

NIGH GOLDENBERG RASO & VAUGHN  
BY: DANIEL A. NIGH, ESQUIRE  
MARLENE J. GOLDENBERG, ESQUIRE  
14 Ridge Square NW, Third Floor  
Washington, DC 20016  
Counsel for Plaintiffs

KIRTLAND & PACKARD LLP  
BY: BEHRAM V. PAREKH, ESQUIRE  
1638 South Pacific Coast Highway  
Redondo Beach, California 90277  
Counsel for Plaintiffs

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP  
BY: RICHARD TODD BERNARDO, ESQUIRE  
One Manhattan West, Suite 42-128  
New York, NY 10001  
Counsel for Defendant ZHP

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI LLP  
BY: FRANK STOY, ESQUIRE  
JASON M. REEFER, ESQUIRE  
One Oxford Centre, 38th Floor  
Pittsburgh, Pennsylvania 15219  
Counsel for Defendant Mylan Pharmaceuticals, Inc.

GREENBERG TRAURIG LLP  
BY: VICTORIA DAVIS LOCKARD, ESQUIRE  
STEVEN M. HARKINS, ESQUIRE  
GREGORY E. OSTFELD, ESQUIRE  
3333 Piedmont Road, NE, Suite 2500  
Atlanta, Georgia 30305  
Counsel For Defendants Teva Pharmaceutical Industries Ltd.,  
Teva Pharmaceuticals USA, Inc., Actavis LLC, Actavis Pharma,  
Inc.

NORTON ROSE FULBRIGHT US LLP  
BY: D'LESLI DAVIS, ESQUIRE  
2200 Ross Avenue  
Suite 3600  
Dallas, Texas 75201  
Counsel for Defendant Mckesson Corp.

**A P P E A R A N C E S:** (Continued)

KIRKLAND & ELLIS LLP  
BY: BRITTNEY NAGLE, ESQUIRE  
601 Lexington Avenue  
New York, New York 10022  
Counsel for Defendants Torrent Pharma, Inc.  
and Torrent Pharmaceuticals Ltd.

ULMER & BERNE LLP  
BY: JEFFREY D. GEOPPINGER, ESQUIRE  
600 Vine Street, Suite 2800  
Cincinnati, Ohio 45202  
Counsel for Wholesaler Defendants and AmerisourceBergen

CROWELL & MORING LLP  
BY: DANIEL TODD CAMPBELL, ESQUIRE  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004  
Counsel for Defendant Cardinal Health

BARNES & THORNBURG, LLP  
BY: KRISTEN L. RICHER, ESQUIRE  
2029 Century Park East, Suite 300  
Los Angeles, California 90067  
Counsel for Retailer Defendants and CVS Pharmacy, Inc., and  
Rite Aid Corporation

HILL WALLACK, LLP  
BY: WILLIAM MURTHA, ESQUIRE  
21 Roszel Road  
Princeton, New Jersey 08540  
Counsel for Defendants Hetero Drugs and Hetero Labs

**Also present:**

Larry MacStravic, Courtroom Deputy

Loretta Smith, Esquire,  
Judicial Law Clerk to the Honorable Robert B. Kugler

1 (PROCEEDINGS, held in open court before the Honorable  
2 Robert B. Kugler, United States District Judge, and Thomas I.  
3 Vanaskie (Ret.), Special Master, at 1:16 p.m. as follows:)

4 THE COURTROOM DEPUTY: All rise.

5 JUDGE KUGLER: Good afternoon. Have a seat, please.

6 Okay. Everybody's summer going well, I hope. People  
7 getting away. I guess you have kids to take to college soon, a  
8 lot of you, so...

9 As you see, Judge Vanaskie is here. He's got some  
10 things that he's going to talk to you about that are pending.

11 Can we get to the order to show cause and that stuff  
12 first and get that out of the way?

13 JUDGE VANASKIE: Makes sense.

14 JUDGE KUGLER: The deficiency notices. I understand  
15 that the Hardwick, Feria, and Janecek cases have been resolved.  
16 So those orders to show cause are dismissed.

17 And the Smason, S-M-A-S-O-N, and Young matters, you  
18 want to relist next month, correct?

19 MR. HARKINS: That's correct, Your Honor. Steve  
20 Harkins from Greenberg Traurig, on behalf of the Teva  
21 defendants and the joint defense group.

22 We have one other update to that list. The matter in  
23 Ricky Young, number 5 on our list, was granted an extension.  
24 So that order to show cause can be continued to the next case  
25 management conference.

1 JUDGE KUGLER: Right. Okay. And you have a number  
2 that you want to put on an order to show cause. Any updates on  
3 those?

4 MR. HARKINS: Three updates, Your Honor. On our  
5 list, listed as number 8, number 13 and number 18. Number 8,  
6 Seifert; number 13, Vander; and number 18, Achkova, those three  
7 orders to show -- or those three requests can be withdrawn.  
8 And we would request orders to show cause returnable at the  
9 next case management conference in the remaining 16 cases.

10 JUDGE KUGLER: Okay. There's Sturgill,  
11 S-T-U-R-G-I-L-L. Anybody here on that?

12 (No response.)

13 MS. GOLDENBERG: Judge, I think I can short-circuit  
14 this.

15 We addressed all the ones that I had notes on from  
16 plaintiffs' counsel, so the rest of them I don't think  
17 anybody's here to speak on.

18 JUDGE KUGLER: Okay. Well, I have to announce them  
19 anyway so they're on the record.

20 Taffnie Williams.

21 (No response.)

22 JUDGE KUGLER: Sharon Thomas.

23 (No response.)

24 JUDGE KUGLER: Joseph George.

25 (No response.)

1 JUDGE KUGLER: Michelle Worms.

2 (No response.)

3 JUDGE KUGLER: Robert Lee.

4 (No response.)

5 JUDGE KUGLER: Karl Bartels.

6 (No response.)

7 JUDGE KUGLER: Tom Lemen, L-E-M-E-N.

8 (No response.)

9 JUDGE KUGLER: James Magee.

10 (No response.)

11 JUDGE KUGLER: Phyllis Axt, A-X-T.

12 (No response.)

13 JUDGE KUGLER: Beatrice Meza, M-E-Z-A; Estate of  
14 Barbara Lipscomb.

15 (No response.)

16 JUDGE KUGLER: Benjamin Andrews; James Polk.

17 (No response.)

18 JUDGE KUGLER: Tina Schram; Dean Tasman.

19 (No response.)

20 JUDGE KUGLER: They will all be listed for orders to  
21 show cause returnable at the next status conference.

22 All right. You have now quite a few more you want to  
23 relist, correct?

24 MR. HARKINS: That's correct, Your Honor.

25 Of the 30 cases on our second table, there are three

1 that we are withdrawing: Number 23, Jonathan Lee; number 29,  
2 Dixie Buxton; and number 30, Pauline Harris. And we'll relist  
3 the remaining 27 cases on the next agenda.

4 JUDGE KUGLER: Okay. Tommy Benton; Jerome Zimmerman.  
5 (No response.)

6 JUDGE KUGLER: Estate of Vincent Thompson.  
7 (No response.)

8 JUDGE KUGLER: Ronald Jackson.  
9 (No response.)

10 JUDGE KUGLER: Byron Wrigley.  
11 (No response.)

12 JUDGE KUGLER: Steven Petrie.  
13 (No response.)

14 JUDGE KUGLER: Gregory Adams; Antonio Guzman; Lori  
15 Stratton.

16 (No response.)

17 JUDGE KUGLER: Lawrence Taliaferro.  
18 (No response.)

19 JUDGE KUGLER: Darlene Barzee.  
20 (No response.)

21 JUDGE KUGLER: Shirley Black.  
22 (No response.)

23 JUDGE KUGLER: Anthony Burton; Lillian Ghrigsby;  
24 Dianne Hardy; Robert Henley; Rhonda Kent; Arthur Smith; Jesus  
25 David Torres.

1 (No response.)

2 JUDGE KUGLER: Joy Higgins; Gonzalo Salazar; Dinah  
3 Brown; Rosanne O'Callaghan; Shawna Martinez; Emmett Wesson;  
4 Estate of Barbara Kaluhiokalani; Estate of Mary Hines.

5 (No response.)

6 JUDGE KUGLER: Those matters will be listed at the  
7 next return date.

8 Anything further, Mr. Harkins?

9 MR. HARKINS: Nothing further. Thank you, Your  
10 Honor.

11 JUDGE KUGLER: All right. Judge Vanaskie.

12 JUDGE VANASKIE: Yeah. There were three issues I  
13 think I wanted to go over, if we could, today. First dealing  
14 with the discovery schedule on the irbesartan and losartan  
15 discovery. It seems to be a --

16 MR. HARKINS: Judge, I'm happy to report that the  
17 parties were able to meet and confer prior to our meeting  
18 today. We have revisited the schedule that is reflected in  
19 footnote 2 of the defendants' position statement as a potential  
20 compromise.

21 JUDGE VANASKIE: Right. Have you agreed to that  
22 compromise?

23 MR. HARKINS: Which would require -- apologies.

24 JUDGE VANASKIE: I'm sorry. Go ahead. That was my  
25 fault.

1 MR. HARKINS: And just to confirm, the parties are  
2 agreeable in principal -- and we would submit an order to this  
3 effect if it's agreeable to the Court -- to the August 31, 2023  
4 deadline to submit disputes to Your Honor; the December 15,  
5 2023 deadline to produce noncustodial documents; and the  
6 February 28, 2024 deadline to complete the custodial  
7 production. And the parties believe we could continue to meet  
8 and confer on the other deadlines, such as for depositions and  
9 eventually expert briefing that were reflected in the  
10 plaintiffs' schedule.

11 JUDGE VANASKIE: Is that correct?

12 MS. GOLDENBERG: It is. We were nice that way this  
13 time. Yes, Your Honor, it is.

14 JUDGE VANASKIE: All right. So would you submit a  
15 proposed order reflecting that?

16 MS. GOLDENBERG: Yes. We'll get one to you in the  
17 next few days, I think; yes.

18 MR. HARKINS: Certainly.

19 JUDGE VANASKIE: All right. Very well. Thanks. So  
20 that was the first issue.

21 The second issue is one I come before you with egg on  
22 my face, and that's the motion dealing with the Valisure  
23 discovery, the subpoena, and the motion for protective order.

24 Are you prepared to address that at all today in any  
25 greater length than the letter briefs that you submitted on

1 this issue?

2 MR. HARKINS: Your Honor, for the defendants, I  
3 believe we just wanted to notify the Court that it's briefed.  
4 We did not intend to reargue it before you unless there's  
5 specific questions that Your Honor would like answered.

6 JUDGE VANASKIE: Okay. All right.

7 MR. NIGH: Your Honor, Daniel Nigh for --

8 JUDGE VANASKIE: And if you're not ready, that's okay  
9 too. I'll give you the question. You can send me a letter  
10 brief on it.

11 MR. NIGH: Daniel Nigh for the plaintiffs. We're  
12 ready to address questions if Your Honor has questions for it.  
13 But we do believe that it was fully argued six months ago.

14 JUDGE VANASKIE: Uh-huh.

15 MR. NIGH: And it's ready and fully briefed; argued  
16 and briefed.

17 JUDGE VANASKIE: It was fully briefed. I looked at  
18 the transcript from six months ago, and we really didn't take  
19 any argument at that time.

20 But the question I have is, if they're only looking  
21 for NDC numbers, what's the big deal?

22 MR. NIGH: I think that that's truly only the first  
23 step are NDC numbers. I think this is sort of like if you give  
24 a mouse a cookie, then he'll want a glass of milk and you go on  
25 down the line from there.

1 I don't think that that's going to be it. I think  
2 that they're going to be looking for more, but it does  
3 supplement. I mean, even one issue, it could lead to  
4 supplementation of expert reports, and then the next thing you  
5 know, they may be asking for depositions, rebriefing on  
6 *Daubert*. I mean, it's an issue that we think is just a  
7 distraction at this point. And I think we've fully briefed how  
8 it's really irrelevant, but it does get into -- it may get into  
9 some more of these issues on how Valisure wasn't equipped,  
10 unreliable in terms of actually being able to test for NDMA in  
11 Diovan and how every other agency -- even the Defendant ZHP has  
12 admitted that there was no NDMA in name brand Diovan.

13 So it opens up a can of worms to get into what is the  
14 NDC code, you know, and providing those NDC codes. And we  
15 think the discovery has long past.

16 JUDGE VANASKIE: Anyone prepared on the defense side  
17 on this issue?

18 MR. HARKINS: Your Honor, I think we would like time  
19 to specifically brief and then present argument on it if you  
20 consider there to be unanswered questions. But I will note, we  
21 are only asking for the information that is requested in the  
22 subpoena, the NDC code numbers.

23 JUDGE VANASKIE: Right.

24 MR. HARKINS: We do not know and neither party knows  
25 whether that is going to lead to any other requests for

1 discovery beyond the specific, incredibly narrowly tailored  
2 request.

3 JUDGE VANASKIE: But you're not willing to commit  
4 that you wouldn't pursue any other discovery depending upon  
5 that information?

6 MR. HARKINS: Your Honor, no, we can't at this time.

7 JUDGE VANASKIE: I understand that. I understand.

8 Why don't you address the timeliness. Or if you  
9 want, maybe you want to submit another letter brief on that.  
10 But, you know, discovery was concluded. An order was issued  
11 saying subpoenas had to be issued by a certain date. This  
12 comes much after that deadline.

13 MR. HARKINS: Your Honor, I might defer to my  
14 colleagues who prepared the initial briefing, if you would. I  
15 don't know if any of them are prepared.

16 JUDGE VANASKIE: And I'm hitting you cold. I'm  
17 sorry.

18 MR. BERNARDO: Your Honor, this is Rich Bernardo for  
19 the ZHP defendants. And, again, this is all fleshed out in our  
20 brief.

21 JUDGE VANASKIE: It's in the briefs, yeah.

22 MR. BERNARDO: Your Honor, but the point is, the  
23 deadline to which plaintiffs point is the deadline for  
24 plaintiffs to issue all third-party subpoenas, and that makes  
25 sense, right? It makes sense that there would be a cutoff for

1 plaintiffs to seek.

2 But, you know, as I frequently hear from plaintiffs,  
3 discovery is an ongoing matter, and this is issues that have  
4 come up in depositions and in connections with experts. So  
5 there's not a deadline for the defendants to issue third-party  
6 subpoenas.

7 And even if there was a deadline for it, which there  
8 isn't, there certainly is good cause here. And as Mr. Harkins  
9 said, we're looking for codes, that's it. I mean, it could be  
10 an email that says, "here are the following codes," and we can  
11 leave it to another day if those codes would require additional  
12 discovery. And we understand that that would be on us to come  
13 back to the Court and seek for that.

14 But all we're seeking right now is codes. There's no  
15 burden. There's really no timeliness issue. And even if there  
16 is, there's good cause to get by that. I mean, we're looking  
17 for the truth here.

18 JUDGE VANASKIE: Right. All right. But there are  
19 deadlines.

20 MR. NIGH: Your Honor --

21 JUDGE VANASKIE: And there are deadlines for fact  
22 discovery. And it seems to me you're beyond that deadline.

23 MR. BERNARDO: We disagree that the deadlines would  
24 apply to this particular circumstance. And if they do, we  
25 agree, for the reasons set forth in the brief, that there would

1 be good cause for this particular, very narrowly tailored  
2 discovery to excuse that.

3 JUDGE VANASKIE: All right. Thank you.

4 MR. BERNARDO: Thank you, Your Honor.

5 MR. NIGH: Can I respond?

6 JUDGE VANASKIE: Yes, you may.

7 MR. NIGH: Yes. I think the clear thing is that the  
8 fact discovery, all fact discovery deadline has passed. That  
9 passed for a reason because you need to have a record that your  
10 experts rely upon. There's nothing here that makes this expert  
11 discovery. That was an attempt, but we found out that  
12 Dr. Najafi doesn't possess any knowledge on the NDC code issue.  
13 This is truly a Valisure issue.

14 This report was published in May of 2019. This is an  
15 issue that has long been known. They could have been asked for  
16 this discovery back in May of 2019. This is very outdated. We  
17 also don't think that this would ever be admissible, you know,  
18 because of all the problems with Valisure's testing. None of  
19 this information is going to be admissible at trial, we don't  
20 believe.

21 JUDGE VANASKIE: Well, that's down the road, though.  
22 That's, you know --

23 MR. NIGH: Yeah. But we're talking about --

24 JUDGE VANASKIE: The question is, what if the  
25 information, the NDC, is for Exforge or Diovan that shows

1 nitrosamine contamination?

2 MR. NIGH: Yeah. We're going to be talking about  
3 then how it's 14 parts per million -- or it's 14 nanograms, and  
4 we would get into this whole line of how when you test, there's  
5 residual NDMA when you test from one to another.

6 The sole purpose of the May 2019 petition was not for  
7 NDMA. It was for DMF, for Macleods. And so all sort of the  
8 testing for validation and all of those issues to make sure  
9 that your testing is accurate, all those issues are going to  
10 come into play if we open this door even further.

11 JUDGE VANASKIE: Okay. Thank you.

12 One last issue, and that is the one interrogatory on  
13 the question of production of transaction by transaction,  
14 information versus aggregated information.

15 MS. RICHER: Yes, Your Honor. Kristen Richer for the  
16 retailer defendants. Do you mean with respect to the  
17 third-party payer payment information or --

18 JUDGE VANASKIE: Excuse me?

19 MS. RICHER: Do you mean with respect to the retailer  
20 discovery?

21 JUDGE VANASKIE: Yes.

22 MS. RICHER: Yes. Yes, Your Honor.

23 JUDGE VANASKIE: So is anybody prepared to argue that  
24 on behalf of the plaintiff?

25 MS. WHITELEY: I'm here, Your Honor.

1           So as I understand it, we have reached agreement to a  
2     certain extent. But, Ms. Richer, would you state your position  
3     and we'll respond?

4           MS. RICHER: Well, with regard to the format of the  
5     production of third-party payer payment information, I think  
6     that issue is fully briefed and was argued to Your Honor in  
7     June.

8           JUDGE VANASKIE: Right.

9           MS. RICHER: And so it's just a question of where  
10    Your Honor comes out on that, and from there we'll move forward  
11    with that discovery. But for the reasons we stated, we don't  
12    think it's necessary that it be produced.

13          JUDGE VANASKIE: Right. Why is  
14    transaction-by-transaction data necessary?

15          MS. WHITELEY: Your Honor, this is the information  
16    that we were working with our experts, and we had presented  
17    that in that way that we think is necessary in order to present  
18    our damages. And also, we've asked for it as it relates to  
19    class notice.

20          (Reporter clarified the record.)

21          MS. WHITELEY: Class notice.

22          JUDGE VANASKIE: Okay.

23          MS. RICHER: And, Your Honor, if I could just  
24    briefly, I think the class notice point is an important one  
25    because to the extent they're talking about third-party payer

1 class notice, that's not a class that we are defendants in.  
2 For consumer class purposes, we're giving them consumer  
3 information. That production is in the works. So I think  
4 those are two different issues that we think it's important to  
5 maintain the boundary between the two of them.

6 MS. WHITELEY: So in addition to anything that's in  
7 our -- you know, we'll respect your ruling on the briefings,  
8 and then there are a few other minor points that we discussed  
9 earlier this morning that we're going to try to work out in the  
10 coming week.

11 JUDGE VANASKIE: All right. Very well. That's all  
12 the questions that I had.

13 JUDGE KUGLER: Do you want to talk about the  
14 losartan, irbesartan schedule?

15 JUDGE VANASKIE: Well, you're working that out,  
16 right?

17 MS. GOLDENBERG: Yes. We'll get you the proposed  
18 order.

19 JUDGE VANASKIE: They're going to get me a proposed  
20 order on that. They've agreed to the compromised position that  
21 was in footnote 2 of the agenda letter.

22 MR. HARKINS: That's correct, Your Honor.

23 JUDGE VANASKIE: And they're kicking down the road  
24 some of the other issues.

25 MR. HARKINS: Yes. We'll meet and confer further on

1 that.

2 JUDGE VANASKIE: Okay.

3 JUDGE KUGLER: Any other issues that you want to  
4 raise today?

5 MR. SLATER: None for plaintiff, Your Honor.

6 MR. OSTFELD: Nothing for defendants, Your Honor.

7 JUDGE KUGLER: When do you want to meet again? You  
8 want to meet in August, the last week in August? Are people  
9 available in the last week in August? I mean, I'll be here.  
10 Thursday, the 31st, does that work for people?

11 MR. SLATER: I will not be here, Your Honor. But I'm  
12 certainly not going to hold up the conference just for me.

13 MR. OSTFELD: Your Honor, I also will not be here.  
14 And my understanding is based on our discussions around the  
15 pending amended Class Notice Plan, it may be productive to wait  
16 an additional week or two. There may be an ability to discuss  
17 that with Your Honor in early September, and we may not be able  
18 to do that in late August.

19 JUDGE KUGLER: Well, that was my next question, was  
20 whether we would be able to accomplish anything in late August.  
21 But that's fine, we can move it into September, if you want.

22 MS. WHITELEY: Your Honor, if I may.

23 JUDGE KUGLER: Go ahead.

24 MS. WHITELEY: Judge Vanaskie, we probably will have  
25 some issues for you for the midterm conference, and I believe

1 that that will probably take care of everything that we need  
2 until September.

3 JUDGE VANASKIE: All right.

4 JUDGE KUGLER: And when is that scheduled for now?

5 MS. GOLDENBERG: Judge, I also just wanted to flag  
6 that the proposed losartan and irbesartan schedule does have a  
7 deadline at the end of August.

8 JUDGE VANASKIE: End of August for you to submit  
9 disputes, yeah.

10 MS. GOLDENBERG: Right. So we can still do that.  
11 We'd like to get them for reasonably close to that date so we  
12 can stick to the other deadlines that we're going to be  
13 submitting to you in the proposed order; but I agree, the last  
14 week of August may be tough for a lot of people.

15 JUDGE VANASKIE: All right. But you'll be teeing up  
16 some issues before that for me?

17 MS. WHITELEY: Well, we'll try not to, or have it to  
18 you as soon as possible, but I expect there will be a few.

19 JUDGE VANASKIE: Okay. Very well.

20 JUDGE KUGLER: September the 6th is a Wednesday.  
21 Does that work? Does that give you enough time; do you think?

22 MR. OSTFELD: Maybe one more week, Your Honor, the  
23 following week.

24 JUDGE KUGLER: Tuesday the 12th or Thursday the 14th.  
25 Do you have any preference?

1 MR. SLATER: 12th would probably be good for us.

2 JUDGE KUGLER: Okay.

3 MR. OSTFELD: I can do the 12th.

4 The 12th works for us, Your Honor.

5 JUDGE KUGLER: All right. You want to do it

6 1:00 p.m. again? Does that work for everybody?

7 MR. OSTFELD: Yes.

8 JUDGE KUGLER: Okay. Well, thank you. Enjoy the

9 balance of the summer. And we'll see you in September.

10 There's a song. I don't know if any of you are old

11 enough to remember that song. Judge Vanaskie.

12 JUDGE VANASKIE: Oh, he's old enough.

13 (Laughter.)

14 JUDGE KUGLER: Anyway. Mr. Slater, can I talk to you

15 about Hetero for a minute, please?

16 MR. SLATER: Sure.

17 THE COURTROOM DEPUTY: All rise.

18 (Proceedings concluded at 1:35 p.m.)

19 -----  
20 **FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE**  
21 -----

22 I certify that the foregoing is a correct transcript  
23 from the record of proceedings in the above-entitled matter.

24 /S/John J. Kurz, RDR-RMR-CRR-CRC

August 6, 2023

25 Court Reporter/Transcriber

<p><b>JUDGE KUGLER:</b> [42]  <b>JUDGE VANASKIE:</b> [40]  <b>MR. BERNARDO:</b> [4] 12/18 12/22 13/23 14/4  <b>MR. HARKINS:</b> [15] 4/19 5/4 6/24 8/9 8/16 8/23 9/1 9/18 10/2 11/18 11/24 12/6 12/13 17/22 17/25  <b>MR. NIGH:</b> [9] 10/7 10/11 10/15 10/22 13/20 14/5 14/7 14/23 15/2  <b>MR. OSTFELD:</b> [5] 18/6 18/13 19/22 20/3 20/7  <b>MR. SLATER:</b> [4] 18/5 18/11 20/1 20/16  <b>MS. GOLDENBERG:</b> [6] 5/13 9/12 9/16 17/17 19/5 19/10  <b>MS. RICHER:</b> [6] 15/15 15/19 15/22 16/4 16/9 16/23  <b>MS. 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